

CHAPTER 3

PREPARATION PROCEDURE

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PRE-TRIAL COURT PROCEDURE

Caution: The following chapter broadly describes civil and criminal procedures affecting the duties and responsibilities of court reporters. The court reporter is strongly advised to discuss any potential questions about specific applications of rules or statutes with the judge.

The Case File

Each case filed with the clerk of the court will have a flat file with a case number assigned to it. See Trial Rule 77(C) and Crim. Rule 21. Ind. Administrative Rule 8 describes the components of a case number.

In a civil case, the file is opened and the case number is assigned when an entity seeking relief submits an initial pleading, called the complaint, accompanied by summons and filing fee to the clerk of the court. Some actions may be commenced without the payment of a filing fee. See Chapter 2; section **The Court Reporter and the Rights of Indigents**. An entity may seek either monetary relief or equitable relief. Examples of equitable relief that may be sought in a complaint include: (a) a temporary restraining order with or without notice, (b) an injunction, (c) a declaratory judgment, and (d) issuance of a protective order either with or without notice.

In a civil case, an entity from whom relief is sought is called a defendant. At least one (1) defendant is named in a complaint. Any named defendant may file an answer to the complaint. A defendant may admit or deny the truthfulness of certain allegations that are contained in the complaint in the answer.

Failure to file an answer may enable the judge to enter a default judgment. In civil cases where the relief sought is monetary damages, the judge may require the plaintiff to prove the amount of damages in an evidentiary hearing. The court reporter may be required to make a record concerning the entry of a default judgment. In the event that a default judgment is entered against a defendant, that defendant may seek relief from the entry of judgment pursuant to T. R. 60(B). The court reporter should make a record of a T. R. 60(B) proceeding.

A criminal case may be initiated utilizing one (1) of two (2) procedures. A file is opened and the case number is assigned either: (a) when the county prosecutor files information with the clerk of the court, or (b) when an indictment is filed with the clerk of the court.

A grand jury verdict or a special grand jury verdict should be signed either: (a) by both the prosecuting attorney and either the grand jury or special grand jury foreperson, or (b) by five (5) members of the grand jury or special grand jury. When a grand jury

verdict or special grand jury verdict is properly signed, when the language of either verdict contains the words "true bill", and when either verdict has been delivered to the clerk of the court and filed, the document is called an indictment.

Bench Trial or Jury Trial

In certain civil and in all criminal cases, any party is entitled to a trial by jury. The right to a trial by jury may be waived in both civil and criminal cases. If the right to a jury trial is waived, a bench trial is held. Bench trials in both civil and criminal cases are conducted in a manner that is similar to the manner in which a jury trial is conducted.

The major differences between bench trial procedure in civil and criminal cases and jury trial procedure in civil and criminal cases are listed below as follows:

1. In bench trials, there are no jury instructions;
2. In bench trials, the judge, not the jury, decides the case;
3. In civil bench trials, any party may file a written request for written findings of fact and conclusions of law before presentation of evidence. See T. R. 52;
4. In criminal trials, a defendant may file a motion to suppress the evidence;
5. In bench trials, motions in limine are rarely utilized because the judge rules on the admission of evidence, and on appeal, the judge is presumed to disregard erroneously admitted evidence.
6. In bench trials, a defendant may move for an involuntary dismissal of the case pursuant to T. R. 41; in jury trials, a defendant may move for a motion for judgment on the evidence pursuant to T. R. 50.
7. In bench trials, no voir dire is conducted.
8. In bench trials, no motions and hearings involving either juror misconduct or 13th (7th) juror issues are asserted.
9. In civil bench trials, final arguments may be verbal; the more common practice is for the judge to order both parties to prepare post-trial briefs and proposed findings of facts and conclusions of law.
10. In bench trials, the judge may take the matter under advisement; the court reporter may have duty to assist judge with the calendar because of the requirements of T. R. 53.1.

Pre-Trial Proceedings in Criminal Cases - Court Reporter's Duties

Grand Jury or Special Grand Jury Proceedings

A court reporter may be required to make a record of grand jury proceedings or of special grand jury proceedings. See Chapter 2. The record shall not be transcribed unless ordered by a court. All grand jury proceedings are secret.

Motions to Suppress Evidence

The motion to suppress is the means by which the issue of whether evidence should be excluded is presented to the judge. A hearing is required; the judge may order the court reporter to prepare a transcript. See Chapter 2 subsection Crim. R. 5.

Guilty Pleas

Many criminal cases are resolved by a plea agreement between the county prosecutor and the defendant. The court reporter must make a record of any guilty plea entered in felony or misdemeanor cases. See Chapter 2 subsection Crim. R. 10.

Pre-Trial Proceedings in Civil Cases - Court Reporter's Duties

Motions for Summary Judgment

In comparative fault personal injury cases, products liability personal injury cases, medical malpractice personal injury cases, governmental entity personal injury cases, and breach of contract cases, the defense may file one or more motions for summary judgment. A hearing must be held on each motion. Either the judge or counsel for any party may request that the hearing be recorded. Testimony may be offered during the hearing. The losing party may initiate an interlocutory appeal. See Chapter 2.

Suggested Pre-Jury Trial or Pre-Bench Trial Preparation

Inspection of the File

Several days before the trial of a case is scheduled to begin, the court reporter should inspect the case file, including the Chronological Case Summary (CCS). A review of the CCS may aid the court reporter by enabling the rapid identification of portions of the file necessary for a more intense review.

The general purpose or goal of a review of the file is to develop a general overview of the entire case. The review will provide the court reporter with the raw data necessary to construct a preliminary log and index discussed in Chapter 4. The review of the file should aid the court reporter in the preparation of a special dictionary for computer-assisted transcription. These activities will generally increase the speed of the trial and increase the accuracy of a transcript.

The court reporter should determine a proper caption. The caption identifies the parties and the case number.

The court reporter should examine the file for the entry of a pre-trial order. See Chapter 2. The court reporter should note the existence of any stipulations and notify the judge. During the file examination, the court reporter should make notes regarding the proper spelling of proper names and common nouns. A pre-trial order may contain evidentiary stipulations and may describe the need to obtain an interpreter for a witness. The court reporter should alert the judge in the event that a review of the pre-trial order

reveals such potential problems. A pre-trial order may also contain cut-off dates for submission of preliminary drafts of both preliminary and final instructions and motions in limine. The court reporter should note the existence of these cut-off dates. In the event that cut-off dates have not expired at the time of a first review of the file, a second review of the file may be necessary.

During the examination of the file, the court reporter should note the existence of any motions in limine. Motions in limine may be filed in either civil or criminal cases. See Chapter 2. The filing of a motion in limine alerts the court reporter to a situation where extra care may be necessary in order to insure the production of a quality transcript; filing of a motion in limine signals the existence of a dispute over admission of evidence, and common problems associated with making a record may arise during the trial.

Although the practice of the judge may vary, a court reporter may ask the judge for permission to arrange a date shortly before the trial for a meeting between the court reporter and counsel. At the meeting, the court reporter pre-marks exhibits and counsel exchange or examine exhibits. Usually, no record is made of the meeting. In this manner, an exhibit “information” sheet may be prepared in advance of trial.

In criminal cases, the court reporter should note when the defendant was personally notified of the trial date. See Chapter 2.

Pre-Trial Review of Instructions

In both civil and criminal cases, a jury receives formal communication from the judge on two (2) occasions: (1) before opening statements; and (2) after the conclusion of final arguments. Jury communication between the judge and the jury takes the form of structured, carefully crafted written paragraphs, which are prepared in advance of trial. These written paragraphs are referred to as instructions. Instructions presented to a jury before opening statements are called preliminary instructions; instructions read to a jury after the conclusion of final arguments are called final instructions.

Practices regarding pre-trial preparation of both preliminary and final instructions vary widely. Some judges prefer to draft their own preliminary and final instructions and refuse all instructions submitted by counsel. Some judges order the parties to prepare and to submit drafts of proposed preliminary and final instructions shortly before trial; the judge uses the proposed drafts to research and to prepare either proper instructions or supplemental instructions to fill in any perceived gaps. Some judges permit the parties to control the instructions and merely enter a ruling regarding which will be given and which will be refused. The court reporter should discuss the judge's preferences regarding instructions before trial.

The judge may require that the court reporter prepare the preliminary issue instruction in a civil case. The judge may also require that the court reporter prepare standard court pattern preliminary instructions in both civil and criminal cases.

The court reporter is required to make a record of instructions as the judge reads the instructions to the jury. In the event that there is a variance between the language of the written form and the judge's spoken word, any aggrieved party must immediately object. The court reporter is required to make a record of any objection. In the absence of any objection, the words spoken by the judge to the jury control over the typed/written words contained on each instruction document.

In both civil and criminal cases, clean copies of the preliminary and final instructions will be provided to the jurors before or at the time they are read to the jury. See Crim. R. 8(D) and IC 35-37-2-2(6). A clean copy does not contain any authority references to statutes or case law or the identity of the drafter of an instruction.

Some judges require the parties to tender both a clean copy of the instructions and a copy containing citations of legal authority. A court reporter may save valuable judge and jury time if clean copies of preliminary and final instructions are prepared in advance. The clean copies of the instructions are delivered to the jurors at the direction of the judge or are placed in their juror notebooks.

The judge must indicate which preliminary and final instructions are to be read and which preliminary and final instructions are refused before presentation of arguments. See Crim. R. 8(B) and T. R. 51(C). The parties are permitted to make verbal objections to those instructions that the judge decides to present to the jury; objections must be made before deliberations commence. See T. R. 51(C) and Crim. R. 8(F) & (H).

On occasion, the court and the attorneys will agree that oral objections to the instructions will be presented to a court reporter during jury deliberations. The court reporter is required to make a record of the agreement and the objections to the instructions. Objections to instructions by counsel often pose difficult verbatim problems for a court reporter. The language of an instruction objection is frequently grammatically incorrect; an objection may contain erroneous citations to cases or to other legal authority.

The court reporter should have a clear understanding of the judge's expectations regarding instructions before trial commences.

Daily Check of the Court Reporter's Work Area and Bench

Before the commencement of either a jury or a bench trial, a court reporter should go into the courtroom and check the reporter's work area in order to insure that all supplies necessary to make a record are available. The Judge may request that the Bench also be maintained with adequate supplies. The court reporter has the duty to insure that the recording equipment and software is properly maintained and in good working order. The court reporter is responsible for preparing and updating appropriate dictionaries and job dictionaries. If sound amplification is necessary, it is the reporter's responsibility to insure that appropriate equipment is available and in proper working order.

Voir Dire

The court reporter should inquire whether the judge plans to order the court reporter to make a record of the qualification examination of each potential juror. The qualification examination is referred to as voir dire. The primary purposes of a voir dire examination are:

- (1) to determine if a juror possesses the statutory qualifications to serve as a juror,
- (2) to determine if a juror can decide the case based only upon evidence presented during the trial, and
- (3) to determine if any personal matter might cause a juror to become distracted from the evidence.
 - a. See IC 33-4-5-7 (age, citizenship, English familiarity, disability, employment),
 - b. IC 34-36-3-5 (interested in another suit, begun or contemplated, involving same or a similar matter),
 - c. IC 35-37-1-5 (bias, prejudice, opposition to imposition of death sentence),
 - d. IC 35-37-2-3 (personal knowledge of material fact).

A juror's employment may serve as a basis for disqualification. See 36-8-3-15 and IC 10-2-1-5. Either the judge and/or the attorneys may conduct the voir dire examination. See IC 34-36-3-4, T. R. 47, Crim. R. 21.

Counsel may request the court reporter make a record of the voir dire examination. Because case law requires a record in order to preserve error for a subsequent appeal, it is likely that the court reporter will make a record of the examination.

Before voir dire begins, the entire panel of potential jurors is sworn as a group. The court reporter should determine whether a record should be made of the judge's administration of the oath to the panel of jurors. Each potential juror is treated as a witness if the court reporter makes a record of the voir dire. After a jury is selected, those jurors are sworn to try the case. See IC 34-36-3-6 and IC 35-37-2-2.

In some instances individualized voir dire will be utilized. Individualized voir dire is a rarely used discretionary procedure where each potential juror is examined in camera, outside of the presence of all other potential jurors.

If a disabled person is a member of a jury panel, the judge may be required to reasonably accommodate a known disability under the Americans with Disabilities Act, the "ADA", 42 U.S.C. 12101, 29 C.F.R. 1630 et seq. See T. R. 43 (F) and Crim. R. 21. The judge may assign this task to the court reporter. Advance notice of the need to have a reasonable accommodation available may be contained in an individual's response to a juror questionnaire.